IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2120 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MULJIBHAI GOVINDBHAI RATHOD

Versus

MANAGER VXL INDIA LTD

Appearance:

Party in person for petitioner.
Mr.K.M. Thakar for M/S TRIVEDI & GUPTA for respondent No. 1
Mr.R.V. Desai, ASSTT GOVERNMENT PLEADER for respondent No. 2

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 23/01/2002

ORAL JUDGEMENT

The present petition is filed by the workman challenging the judgement and award passed by the Industrial Tribunal, Rajkot in Approval Application (IT)

No.17 of 1986 dated 30.1.1989, whereby the learned Member of the Industrial Tribunal was pleased to grant the said application and approved the order dated 9.10.1986 dismissing the present petitioner from service.

2. Earlier, Mr. A.N. Patel was appearing for the present petitioner, but on 17.1.2002 Mr.A.N. Patel, learned advocate stated that the petitioner has taken back papers from him and now he does not appear for the petitioner any more. The petitioner was present before the Court, he stated that, he appears as 'Party in Person' in the matter. The matter was heard on 17.1.2002, 18.1.2002 and thereafter it was kept today. The Party in Person argued the matter. Mr.K.M. Thakar, learned advocate appeared for Messrs Trivedi & Gupta and submitted that after the judgement and order under challenge the main reference being Reference (LCR) No.40 of 1989 (which was renumbered as Reference (LCJ) No.558 of 1990) challenging the order of dismissal is already decided. Mr.Thakar, learned advocate for the respondent submitted that the main reference was partly allowed and the 'order of dismissal' was changed to an 'order of discharge'. Being aggrieved of that both the workman and the company have filed separate petitions before this Court being Special Civil Applications No.6398 of 1999 and 10084 of 1999 respectively. It is further stated that both these petitions are admitted and pending for final disposal. Mr.Thakar submitted that in view of that present petition does not survive and same should not hold back the Court. But only with a view to see that the Party in Person has satisfaction that he is heard by the Court, he was allowed to make submissions. The Party in Person has repeatedly submitted that he is victimised by the respondent company on account of his union activities as he was the Joint Secretary of the Union.

3. Approval Application under sec.33(B) of Industrial Disputes Act bearing No.17 of 1986 was filed as at the relevant time a reference arising from General Demand bearing Reference (IT) No.514 of 1984 was pending. The Party in Person submitted a compilation of 136 pages, which contains various documents. On 18.12.2001 he was asked to supply a copy of the same to the learned advocate for the respondent company, but he declined to supply the same on the plea that all these papers are in possession of the respondent company and therefore, he is not under an obligation to supply them to other side. Taking into consideration the fact that he is Party in Person the Court permitted the learned advocate appearing for the respondent company to obtain xerox copies of these papers from the Court's copy. Mr.Thakar has now

got a xerox copy of the compilation. He made his submissions on the basis of that compilation.

4. The Party in Person made the following submissions:

(i) He submitted that he is alleged of having not given required production as was prescribed by the company by fixing the 'gauge'. He submitted that no such 'gauge' was ever prescribed and he was working to the best of his capacity with utmost sincerity. Therefore, the basic charge against him of having not complied with the production standards fixed by the company is not correct.

(ii) He also submitted that he was not paid suspension allowance from the date of his suspension till the order of dismissal was passed. He was suspended on 20.1.1986 as is seen from page 26 of the compilation.

(iii) He also submitted that he was a protected workman as he was Joint Secretary of the Union, named, Gujarat Rajya Kamdar Sabha, which was established in 1981 bearing Registration No.6/ 2221 and he being a protected workman, the respondent company was required to obtain permission and not approval.

5. Mr.Thakar, learned advocate appearing for the respondent made available to the Court a copy of the Approval Application and its reply dated 19.12.1986. On perusal it is found that the petitioner has reiterated his case of being victimised by the respondent company. He also contended that he was not intimated the dates of inquiry. It was also contended that neither the petitioner nor his representative was intimated about the date of inquiry. The inquiry was conducted ex parte. The papers of inquiry were not supplied to the petitioner till date, i.e. the date of filing of reply. Thus, it is clear that the respondent company had made systematic plan to hold the petitioner workman guilty.

6. It was also contended that the petitioner workman had demanded details of 'guage of production' prescribed by the company, but the same were not supplied. The petitioner was Joint Secretary and was working with prior permission of the concerned officer and there was no question of his disobeying the orders of his superiors, but only with view to harass the petitioner for his union activities, he was given charge sheet dated 20.1.1986.

7. The learned Judge has decided the issue which is

required to be decided in an approval application as stated in para 7. After careful consideration of the rival contentions of both the sides, the learned Judge had come to the conclusion that the order of dismissal dated 9.10.1986 is required to be granted approval.

8. Mr.Thakar, learned advocate appearing for the respondent company submitted that along with the charge sheet a list of incidents with details of the petitioner having left his place of work on different dates while working at the floor of a particular shop, for various duration was submitted and a statement showing the production of the petitioner workman and the average production of the other winders who were working on the same type of machines with the same type of goods, was produced. On perusal of Annexure 'A', charge sheet it can be seen that the petitioner workman is in the habit of moving away from his place of work and from Annexure 'B' it is clear that the production of the petitioner workman never reached the average level. In the process of inquiry, a statement showing the date of punishment, nature of misconduct and punishment awarded consisting of 36 instances starting from 3.11.1971 to 1.1.1986 was produced before the Inquiry Officer.

9. Mr.Thakar, learned advocate appearing for the respondent company relied upon a judgement of the Honourable the Apex Court in the matter of Martin Burn Ltd., v. R.N. Banerjee reported in AIR 1958 SC 79 wherein the Honourable the Apex Court was examining the scope of section 22 of the Industrial Disputes (Appellate Tribunal) Act, 1950. Mr.Thakar also relied upon the judgement in the matter between The Lord Krishna Textile Mills v. Its Workmen reported in AIR 1961 SC 860 wherein the Honourable the Apex Court was considering the scope of section 33 (2)(b) of the Industrial Disputes Act, 1947.

10. In view of the fact that two petitions filed by both the sides challenging the judgement and award in main reference are pending before this Court, the present petition has become infructuous. The Court will be examining the legality and validity of the order of dismissal on merits in those petitions. In the present petition the scope is only to see as to whether 'the order granting approval' was just and proper or not. The Court would not have examined had the petitioner represented by an advocate.

11. Any observations made in this judgement while holding that 'the order granting approval' is legal and

proper be not taken into consideration while the Court examines the legality and validity of the order of dismissal.

12. In the result, the present Special Civil Application fails. The same is disposed of with the aforesaid observations. Rule is discharged with no order as to costs.

(Ravi R. Tripathi, J.)

karim